

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

FRESH EXPRESS INCORPORATED,

Petitioner,

vs.

SUPREME OIL COMPANY,

Registrant.

Cancellation No. 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

74/172,354



11-28-2008

U.S. Patent & TMO/TM Mail Rpt. Ct. #21

**REGISTRANT'S MOTION FOR PROTECTIVE ORDER  
WITH RESPECT TO PETITIONER'S REQUESTS FOR ADMISSION AND  
RELATED SECOND SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Pursuant to 37 C.F.R. § 2.120(f), Registrant Supreme Oil Company, ("Registrant"), hereby moves the Board for the entry of a Protective Order with regard to the Petitioner's Second Set of Requests for Admission and Petitioner's Second Set of Requests for Production of Documents served on Registrant by Petitioner Fresh Express Incorporated ("Petitioner"). The Board suspended proceedings in this matter pending disposition of Registrant's Motion to Compel, but this Motion involves pending discovery not suspended and even in some ways as will be shown relates to and is germane to the pending Motion to Compel.

Specifically, Registrant respectfully moves for an order striking Petitioner's Second Set of Requests for Admission and Second Set of Requests for Documents (consisting of 585 Requests for Admission, which now bring the total Requests for Admissions to 689); in addition, Petitioner has propounded a set of Interrogatories, which, including subparts which total well over 100, and two sets of Requests for

Documents numbering 90 Requests and potentially totaling 779). Alternatively, Registrant moves for an Order relieving Registrant from any duties to answer or to respond to Petitioner's Second Set of Requests for Admissions and Petitioner's Second Set of Requests for Documents, and additionally any further obligation to clarify or supplement its responses and objections to Petitioner's First Set of Requests for Admission.

It is submitted that, as shown below, there is presented a certain set of factual circumstances by way of Petitioner's discovery complained of herein, which constitutes an abuse of the discovery process, a level of clear harassment and/or is oppressively and exceedingly burdensome and unduly expensive, thereby permitting this Motion to be filed in lieu of answering Petitioner's Second Set of Requests for Admissions and Document Requests with attendant objections, as permitted by 37 C.F.R. 2.120(f) and TTAB Rule 526. Petitioner's current discovery abuses are merely an ongoing extension of its behavior in this proceeding, in that Petitioner has already once before attempted to improperly use Requests for Admission in a failed attempt to secure a Summary Judgment ruling as reflected by the Board's Order of October 15, 2008.

**I. INTRODUCTION-THIS MOTION IS GERMANE TO REGISTRANT'S PENDING MOTION TO COMPEL, IS NECESSARY IN VIEW OF THE BOARD'S NOVEMBER 24 ORDER, AND TO FURTHER ILLUSTRATE PETITIONER'S DISCOVERY ABUSES IN THIS PROCEEDING**

Registrant filed its Motion on November 21, 2008 to compel Petitioner's answers and responses to Registrant's discovery requests, served long ago on Petitioner in April, 2008. In an Order from the Board dated November 24, 2008, proceedings in this matter have now been suspended pending resolution of the Registrant's Motion to Compel,

except as to matters which are germane to this motion. This suspension order also does not toll the time for either party to respond to outstanding discovery requests.

Accordingly, this Motion for Protective Order is not only germane to, and directly related to, Registrant's Motion to Compel, but is necessary as the Board's Order of November 24, 2008 does not toll Registrant's obligations to answer Petitioner's Second Set of Requests for Admission and Second Set of Document Requests, and it further necessarily serves to demonstrate Petitioner's discovery abuses in this proceeding by way of Petitioner propounding almost seven-hundred (700) mostly duplicative, burdensome, cumulative, and non-relevant Requests for Admission on Registrant with Document Requests, numbering 68, bringing the total of Document Requests to 90, apparently primarily designed to annoy and harass rather than to isolate substantive issues, while at the same time with Petitioner refusing to answer essentially any of Registrant's discovery requests.

## **II. FACTUAL MATTERS AND PROTECTIVE RELIEF REQUESTED BY REGISTRANT WITH SUPPORTING AUTHORITY**

On September 10, 2007, Petitioner served its First Set of Requests for Admission on Registrant, containing a total of one hundred and four (104) numbered requests, not counting subparts, for the years 1993-2006, inclusive. (A copy of these Requests is attached as Exhibit A). Petitioner also served its First Set of Document Requests on Registrant on that date. (A copy of these Document Requests is attached as Exhibit B). Registrant subsequently served upon Petitioner its responses with objections to each and every Request for Admission and Document Request. (A copy of these responses with objections is attached as Exhibit C). Petitioner has not filed a Motion to Compel or to

otherwise test the sufficiency of Registrant's Answers to these Requests for Admission and Document Requests.

Instead, shortly thereafter, on November 6, 2008, Petitioner served its Second Set of Requests for Admission on Registrant with respective Second Set of Document Requests, containing a brand new set of five-hundred and eighty-five Requests (Nos. 1-585, with original Nos. 1-104 having already been answered as mentioned) with related document requests, for a grand total of six-hundred and eighty-nine (689) numbered requests, not including subparts, for the years 1993-2007, inclusive, and sixty-eight (68) Document Requests. (A copy of Petitioner's Second Set of Requests is attached as Exhibit D; Petitioner's Second Set of Document Requests is attached as Exhibit E). To summarize, in the aggregate, Petitioner's two sets of Requests for Admission total six hundred and eighty nine (689), excluding subparts, and two sets of Requests for Production of Documents total ninety (90), excluding subparts, covering a fourteen-year span of time.

All of Petitioner's 689 Requests Nos. 1-104 and 1-585 and 90 Document Requests Nos. 1-22 and 1-68 are non-relevant, in not being limited to the United States, and unduly vague, repetitive, cumulative, duplicative, and overly burdensome as many request a response based on information from years ago which is not now available to Registrant, or by way of Registrant's former attorney who has been deceased for some years.

Therefore, pursuant to 37 C.F.R. § 2.120(f), Registrant now moves for a Protective Order on the grounds that the sheer number of and span of time covered by Petitioner's served Second Set of Requests for Admission with their related Second Set

of Requests for Documents are outrageously burdensome and far outside the permissible scope of the rules, and that the burden imposed on Registrant far outweighs any likely benefit to Petitioner.

Under Rule 26 of the Federal Rules of Civil Procedure, the Board clearly has the authority to grant a protective order "where justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Pursuant to TBMP § 526, Registrant asserts that this request for discovery constitutes clear harassment, and as such, Registrant's instant Motion is a proper response to Petitioner's discovery request. Registrant should not be subjected to the time and expense of responding to 689 Requests for Admission with respective Document Requests absent some showing by Petitioner that the burden is outweighed by a relative benefit. The burden of responding to almost 700 objectionable Requests for Admission and 68 Document Requests outweighs any benefit that Petitioner could possibly derive from the responses.

Registrant acknowledges that requests for admission are not a general discovery device. Rather, they are intended to streamline the proceedings, especially the proceedings at trial. With this large number of requests, however, it does not appear that Petitioner is interested in streamlining any proceedings, but instead intends to annoy, harass, unduly burden and/or oppress Registrant or otherwise subject Registrant to outrageous and unnecessary expenses all in violation of Federal Rule 26 and TBMP § 526. Further, as Petitioner's prior behavior has illustrated, its abuse of the discovery process is on-going as it has already once before improperly utilized Requests for Admission in a failed attempt to secure a Summary Judgment ruling.

It is respectfully submitted that Petitioner's imposition of 689 Requests for Admission, and 68 Requests for Documents, is both an abuse of the discovery process and an improper attempt to circumvent TMBP § 405.03(a) and Federal Rule 33(a)'s limit of 75 interrogatories. The requests imposed by Petitioner are burdensome since they are redundant, cumulative, and repetitive, and, as mentioned, not relevant as not being limited to the U.S. Additionally, considering this proceeding is a cancellation based on alleged abandonment of Registrant's mark, the complexity of this proceeding does not warrant Petitioner's exceedingly abusive massive number of repetitive, non-relevant Requests for Admission and Document Requests. *See, for example, Wigler v. Electronic Data Systems Corp.*, 108 F.R.D. 204, 206 (D. Md. 1985) (finding an excessive number of Requests for Admission in a case involving a single plaintiff employment discrimination suit).

Requests for admission should focus on important factual matters and not factual minutia. A party cannot put the burden of discovery on the other party by obtaining all factual details by means of requests for admission. *Mitchell v. Yeutter*, 1993 U.S. Dist LEXIS (D Kans. 1993).

The Requests for Admission and respective Document Requests imposed by Petitioner are overly burdensome since they are unreasonably large in number and unreasonably broad in scope. A requirement that a party make a reasonably inquiry to respond to Requests for Admissions becomes unreasonably and unduly burdensome when multiplied by 689 repetitive, cumulative, and non-relevant requests along with respective requests for documents.

WHEREFORE, Registrant respectfully moves this Honorable Court for an Order:

1. Declaring that Registrant's responses to Petitioner's 104 First Requests for Admission are sufficient and that Registrant need not respond further to Petitioner's 104 First Requests for Admission;
2. Striking Petitioner's Second Requests for Admission and/or relieving Registrant of the obligation of responding to these Requests;
3. Striking Petitioner's Second Set of Requests for Production of Documents and/or Relieving Registrant of responding to these Requests; and
4. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

**Supreme Oil, Inc.**

By: 

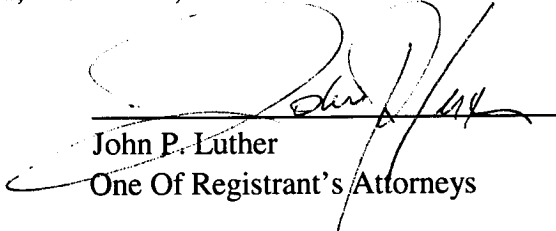
John P. Luther

One of Registrant's Attorneys

Frederick W. Meyers  
Burton S. Ehrlich  
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Tanya H. Miari  
Ladas & Parry LLP  
224 South Michigan Avenue, Suite 1600  
Chicago, Illinois 60604  
(312) 427-1300

### **CERTIFICATE OF MAILING**

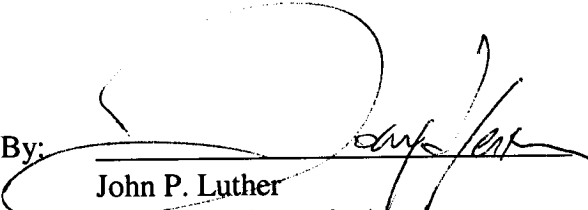
I hereby certify that this paper is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to Box TTAB NO FEE; Assistant Commissioner for Trademarks, U.S. Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on this 25th day of November, 2008.

  
John P. Luther  
One Of Registrant's Attorneys

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing REGISTRANT'S MOTION FOR PROTECTIVE ORDER WITH RESPECT TO PETITIONER'S REQUESTS FOR ADMISSION AND RELATED SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS was deposited with the U.S. Postal Service as first class mail on this 25<sup>th</sup> day of November, postage prepaid, addressed to counsel for Petitioner, as follows:

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111  
T 415-398-6300 (F 415-398-6306)  
[lperry@perryip.com](mailto:lperry@perryip.com)

By:   
John P. Luther  
One Of Registrant's Attorneys



# **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**PETITIONER'S REQUESTS FOR  
ADMISSION TO REGISTRANT  
Nos. 1-104**

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Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and C.F.R. 2.120, FRESH EXPRESS INCORPORATED, ("Petitioner"), hereby propounds and serves the following requests for admissions upon SUPREME OIL COMPANY ("Registrant"). These requests are continuing and impose upon Registrant the obligations stated in Fed. R. Civ. P. 26.

**DEFINITIONS AND INSTRUCTIONS**

The Definitions and Instructions contained in Petitioner's First Set Of Interrogatories To Registrant served herewith are incorporated by reference and shall apply to these requests.

**REQUESTS**

1. Registrant ("You") have not used the mark SALAD BAR ("Your Mark") on "relish" during one or more of the following years: 1993 through 1999.
2. You have not used Your Mark on "tartar sauce" during one or more of the following years: 1993 through 1999.
3. You have not used Your Mark on "vinegar" during one or more of the following years: 1993 through 1999.
4. You have not used Your Mark on "spices" during one or more of the following years: 1993 through 1999.
5. You have not used Your Mark on "capers" during one or more of the following years: 1993 through 1999.
6. You have not used Your Mark on "condiments" during one or more of the following years: 1993 through 1999.
7. You have not used Your Mark on "marinated mushrooms" during one or more of the following years: 1993 through 1999.
8. You have not used Your Mark on "mustard" during one or more of the following years: 1993 through 1999.
9. You have not used Your Mark on "rice" during one or more of the following years: 1993 through 1999.
10. You have not used Your Mark on "food flavoring" during one or more of the following years: 1993 through 1999.
11. You have not used Your Mark on "salad dressing" during one or more of the following years: 1993 through 1999.

12. You have not used Your Mark on "salad oil" during one or more of the following years: 1993 through 1999.

13. You have not used Your Mark on "mayonnaise" during one or more of the following years: 1993 through 1999.

14. You have not used Your Mark on "relish" during the year 2000.

15. You have not used Your Mark on "tartar sauce" during the year 2000.

16. You have not used Your Mark on "vinegar" during the year 2000.

17. You have not used Your Mark on "spices" during the year 2000.

18. You have not used Your Mark on "capers" during the year 2000.

19. You have not used Your Mark on "condiments" during the year 2000.

20. You have not used Your Mark on "marinated mushrooms" during the year 2000.

21. You have not used Your Mark on "mustard" during the year 2000.

22. You have not used Your Mark on "rice" during the year 2000.

23. You have not used Your Mark on "food flavoring" during the year 2000.

24. You have not used Your Mark on "salad dressing" during the year 2000.

25. You have not used Your Mark on "salad oil" during the year 2000.

26. You have not used Your Mark on "mayonnaise" during the year 2000.

27. You have not used Your Mark on "relish" during the year 2001

28. You have not used Your Mark on "tartar sauce" during the year 2001.

29. You have not used Your Mark on "vinegar" during the year 2001.

30. You have not used Your Mark on "spices" during the year 2001.

31. You have not used Your Mark on "capers" during the year 2001.

32. You have not used Your Mark on "condiments" during the year 2001.

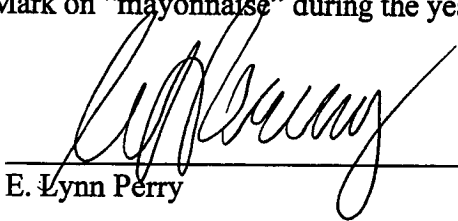
33. You have not used Your Mark on "marinated mushrooms" during the year 2001.
34. You have not used Your Mark on "mustard" during the year 2001.
35. You have not used Your Mark on "rice" during the year 2001.
36. You have not used Your Mark on "food flavoring" during the year 2001.
37. You have not used Your Mark on "salad dressing" during the year 2001.
38. You have not used Your Mark on "salad oil" during the year 2001.
39. You have not used Your Mark on "mayonnaise" during the year 2001.
40. You have not used Your Mark on "relish" during the year 2002
41. You have not used Your Mark on "tartar sauce" during the year 2002.
42. You have not used Your Mark on "vinegar" during the year 2002.
43. You have not used Your Mark on "spices" during the year 2002.
44. You have not used Your Mark on "capers" during the year 2002.
45. You have not used Your Mark on "condiments" during the year 2002.
46. You have not used Your Mark on "marinated mushrooms" during the year 2002.
47. You have not used Your Mark on "mustard" during the year 2002.
48. You have not used Your Mark on "rice" during the year 2002.
49. You have not used Your Mark on "food flavoring" during the year 2002.
50. You have not used Your Mark on "salad dressing" during the year 2002.
51. You have not used Your Mark on "salad oil" during the year 2002.
52. You have not used Your Mark on "mayonnaise" during the year 2002.
53. You have not used Your Mark on "relish" during the year 2003
54. You have not used Your Mark on "tartar sauce" during the year 2003.
55. You have not used Your Mark on "vinegar" during the year 2003.

56. You have not used Your Mark on "spices" during the year 2003.
57. You have not used Your Mark on "capers" during the year 2003.
58. You have not used Your Mark on "condiments" during the year 2003.
59. You have not used Your Mark on "marinated mushrooms" during the year 2003.
60. You have not used Your Mark on "mustard" during the year 2003.
61. You have not used Your Mark on "rice" during the year 2003.
62. You have not used Your Mark on "food flavoring" during the year 2003.
63. You have not used Your Mark on "salad dressing" during the year 2003.
64. You have not used Your Mark on "salad oil" during the year 2003.
65. You have not used Your Mark on "mayonnaise" during the year 2003.
66. You have not used Your Mark on "relish" during the year 2004.
67. You have not used Your Mark on "tartar sauce" during the year 2004.
68. You have not used Your Mark on "vinegar" during the year 2004.
69. You have not used Your Mark on "spices" during the year 2004.
70. You have not used Your Mark on "capers" during the year 2004.
71. You have not used Your Mark on "condiments" during the year 2004.
72. You have not used Your Mark on "marinated mushrooms" during the year 2004.
73. You have not used Your Mark on "mustard" during the year 2004.
74. You have not used Your Mark on "rice" during the year 2004.
75. You have not used Your Mark on "food flavoring" during the year 2004.
76. You have not used Your Mark on "salad dressing" during the year 2004.
77. You have not used Your Mark on "salad oil" during the year 2004.

78. You have not used Your Mark on "mayonnaise" during the year 2004.
79. You have not used Your Mark on "relish" during the year 2005.
80. You have not used Your Mark on "tartar sauce" during the year 2005.
81. You have not used Your Mark on "vinegar" during the year 2005.
82. You have not used Your Mark on "spices" during the year 2005.
83. You have not used Your Mark on "capers" during the year 2005.
84. You have not used Your Mark on "condiments" during the year 2005.
85. You have not used Your Mark on "marinated mushrooms" during the year 2005.
86. You have not used Your Mark on "mustard" during the year 2005.
87. You have not used Your Mark on "rice" during the year 2005.
88. You have not used Your Mark on "food flavoring" during the year 2005.
89. You have not used Your Mark on "salad dressing" during the year 2005.
90. You have not used Your Mark on "salad oil" during the year 2005.
91. You have not used Your Mark on "mayonnaise" during the year 2006.
92. You have not used Your Mark on "relish" during the year 2006.
92. You have not used Your Mark on "tartar sauce" during the year 2006.
94. You have not used Your Mark on "vinegar" during the year 2006.
95. You have not used Your Mark on "spices" during the year 2006.
96. You have not used Your Mark on "capers" during the year 2006.
97. You have not used Your Mark on "condiments" during the year 2006.
98. You have not used Your Mark on "marinated mushrooms" during the year 2006.
99. You have not used Your Mark on "mustard" during the year 2006.
100. You have not used Your Mark on "rice" during the year 2006.

101. You have not used Your Mark on "food flavoring" during the year 2006.
102. You have not used Your Mark on "salad dressing" during the year 2006.
103. You have not used Your Mark on "salad oil" during the year 2006.
104. You have not used Your Mark on "mayonnaise" during the year 2006.

September 10, 2007



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E. Lynn Perry

Perry IP Group ALC  
4 Embarcadero Center, 39<sup>th</sup> Floor  
San Francisco, CA 94111  
415-398-6300



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing


PETITIONER'S REQUESTS FOR ADMISSION  
TO REGISTRANT Nos. 1-104

was served by delivering a true and correct copy of same via First Class Mail on the date  
indicated below, upon the following:

Frederick W. Meyers  
Amanda M. Roach  
Ladas & Parry LLP  
224 S. Michigan Avenue  
Suite 1600  
Chicago, IL 60604

September 10, 2007

Linda Penry

A handwritten signature in black ink, appearing to be 'Linda Penry', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

# **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**PETITIONER'S REQUESTS FOR  
PRODUCTION OF DOCUMENTS  
TO REGISTRANT**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and C.F.R. 2.120 (d), FRESH EXPRESS INCORPORATED, ("Petitioner"), hereby requests that SUPREME OIL COMPANY ("Registrant"), produce for inspection and copying, at the offices of E. Lynn Perry, 4 Embarcadero Center, 39<sup>th</sup> Floor, San Francisco, CA 94111, or at such other place as agreed to by the parties, within thirty (30) days from the date of service, the documents and things requested below. These requests are continuing and impose upon Registrant the obligations stated in Fed. R. Civ. P. 26.

**DEFINITIONS AND INSTRUCTIONS**

The Definitions and Instructions contained in Petitioner's First Set Of Interrogatories To Registrant served herewith are incorporated by reference and shall apply to these requests.

**REQUESTS**

1. Representative Documents concerning the creation, design, selection, approval, adoption, display and use of Your Mark.
2. All Documents comprising or relating to any assignments, licenses, permissions, consents or other transfers of any right, title or interest in Your Mark.
3. Representative Documents concerning use of Your Mark or any confusingly similar mark, by third parties.
4. All Documents concerning any application for trademark registration made by Registrant or any other person or entity for Your Mark in the United States Patent and Trademark Office.
5. All Documents concerning or comprising evidence, if any, of Registrant's first use and first use in interstate commerce in the United States of the Mark SALAD BAR.
6. All Documents concerning or comprising evidence of Registrant's use in commerce in the United States of the Mark SALAD BAR since March 16, 1993.
7. Representative Documents concerning Registrant's actual and potential market, customers and users of the Goods intended to be provided under the SALAD BAR Mark.
8. Representative Documents concerning the channels of trade in which Registrant's Goods are intended to be, or are advertised, marketed or sold.
9. Representative Documents concerning Registrant's actual or planned advertising and promotion of Goods associated with the SALAD BAR Mark.
10. Examples or copies of each and every advertisement, display and item of promotional material and any and all drafts of same, whether or not used, in connection with any Goods associated with the SALAD BAR Mark.

11. Documents sufficient to disclose all marketing, advertising and promotional expenditures projected to be made by Registrant in connection with its use of the SALAD BAR Mark.

12. Representative Documents concerning communications between Registrant and any third party, including advertising agencies, publishers, sellers and vendors, relating to any advertising, promotion or marketing in connection with any Goods associated with the SALAD BAR Mark.

13. Representative Documents concerning the marketing, promotion and sales procedures or methods used by Registrant in connection with any Goods associated with the SALAD BAR Mark.

14. Representative Documents concerning the proposed marketing, promotion and sales procedures or methods to be used by Registrant in connection with any Goods associated with the SALAD BAR Mark.

15. Representative Documents concerning sales solicitation by Registrant for any Goods associated with the SALAD BAR Mark.

16. All documents concerning actual or planned surveys, market research, consumer perception studies, secondary meaning pilots or surveys or other investigations or studies made by or on behalf of Registrant concerning any Goods associated with the SALAD BAR Mark.

17. All Documents concerning any studies of demographics of purchasers or likely purchasers of Registrant's Goods associated with the SALAD BAR Mark.

18. Representative reviews, reports and mentions in any publication or by any third party since March 16, 1993 of Registrant's SALAD BAR Mark.

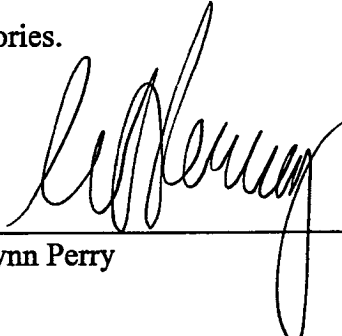
19. At least one (1) sample of each Document which describes, advertises, offers, or otherwise refers to any Goods associated with SALAD BAR Mark.

20. All Documents which project or discuss the expected revenue for Goods sold under the SALAD BAR Mark.

21. All Documents concerning Petitioner, excluding Documents on file in this Cancellation Proceeding.

22. To the extent not already called for, each and every Document identified in response to Petitioner's First Set of Interrogatories.

September 10, 2007

  
\_\_\_\_\_  
E. Lynn Perry

Perry IP Group ALC  
4 Embarcadero Center, 39<sup>th</sup> Floor  
San Francisco, CA 94111  
415-398-6300

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing

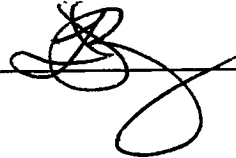
**PETITIONER'S REQUESTS FOR PRODUCTION  
OF DOCUMENTS TO REGISTRANT**

was served by delivering a true and correct copy of same via First Class Mail on the date indicated below, upon the following:

Frederick W. Meyers  
Amanda M. Roach  
Ladas & Parry LLP  
224 S. Michigan Avenue  
Suite 1600  
Chicago, IL 60604

September 10, 2007

\_\_\_\_\_  
Linda Penry

A handwritten signature in black ink, appearing to be 'Linda Penry', is written over a horizontal line.

# **EXHIBIT C**



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

**FRESH EXPRESS INCORPORATED,**

**Petitioner,**

**vs.**

**SUPREME OIL COMPANY,**

**Registrant.**

**Cancellation No. 92047162**

**Reg. No. 1,758,520**

**Issued: March 16, 1993**

**Mark: SALAD BAR**

**REGISTRANT'S RESPONSES TO  
PETITIONER'S REQUESTS FOR  
ADMISSION TO REGISTRANT  
Nos. 1-104**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and C.F.R. 2.120, SUPREME OIL COMPANY, ("Registrant"), hereby propounds and serves the following responses to Petitioner Fresh Express Incorporated ("Petitioner's") Requests for Admissions.

**GENERAL OBJECTIONS**

The following general objections ("General Objections") apply to all Petitioner's Requests for Admissions ("Requests") and are incorporated by reference into each answer made herein. The assertion of the same, similar or additional objections or the provision of partial answers in the individual responses to these Requests does not waive any of Registrant's General Objections as set forth below:

1. Registrant objects to Petitioner's questions to the extent that they purport to impose any duty on Registrant inconsistent with, or beyond that specified in the Federal Rules and Civil Procedure. This objection is pertinent to each of the Petitioner's Requests.

2. Registrant objects to the Requests to the extent that they seek information that is protected from disclosure by the attorney-client privilege, the work product doctrine or any other recognized privilege.

3. Registrant objects to providing information or documents to the extent they contain information regarded as confidential, proprietary or trade secrets. The Registrant will agree to a reasonable Protective Order to maintain the confidentiality of certain requested information.

4. Registrant objects to the Requests to the extent that they seek information that may be less onerously obtained through other discovery requests.

5. Registrant objects to the Requests to the extent that they are vague and ambiguous, in that they fail to adequately define the terms used in the Requests.

6. Registrant further objects to the entire set of Requests for Admission on the basis that the Petitioner has not limited its request for information to the U.S. market. Some of the requested information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is further overly broad, burdensome and oppressive in that it requires an accumulation of information potentially on other subject matter and would cause Registrant to peruse virtually all corporate records over a lengthy time period.

7. Registrant objects to the Requests to the extent that they fail to seek an admission of the truth of matters relevant to the pending proceedings.

8. Registrant bases its responses upon its present knowledge (a) without conceding relevancy or materiality of any requests, (b) without prejudice to Registrant's

right to object to further discovery or proof of the subject matter, and (c) incorporates its general objections into each Answer.

Registrant reserves the right to change or supplement a response should it appear to be incomplete or incorrect, or if additional information should become available.

### **REQUESTS**

1. Registrant ("You") have not used the mark SALAD BAR ("Your Mark") on "relish" during one or more of the following years: 1993 through 1999.

#### **Response to Request No. 1:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

2. You have not used Your Mark on "tartar sauce" during one or more of the following years: 1993 through 1999.

#### **Response to Request No. 2:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

3. You have not used Your Mark on "vinegar" during one or more of the following years: 1993 through 1999.

**Response to Request No. 3:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

4. You have not used Your Mark on "spices" during one or more of the following years: 1993 through 1999.

**Response to Request No. 4:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

5. You have not used Your Mark on "capers" during one or more of the following years: 1993 through 1999.

**Response to Request No. 5:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

6. You have not used Your Mark on "condiments" during one or more of the following years: 1993 through 1999.

**Response to Request No. 6:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

7. You have not used Your Mark on "marinated mushrooms" during one or more of the following years: 1993 through 1999.

**Response to Request No. 7:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

8. You have not used Your Mark on "mustard" during one or more of the following years: 1993 through 1999.

**Response to Request No. 8:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

9. You have not used Your Mark on "rice" during one or more of the following years: 1993 through 1999.

**Response to Request No. 9:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly

burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

10. You have not used Your Mark on "food flavoring" during one or more of the following years: 1993 through 1999.

**Response to Request No. 10:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

11. You have not used Your Mark on "salad dressing" during one or more of the following years: 1993 through 1999.

**Response to Request No. 11:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request



as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

12. You have not used Your Mark on "salad oil" during one or more of the following years: 1993 through 1999.

**Response to Request No. 12:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

13. You have not used Your Mark on "mayonnaise" during one or more of the following years: 1993 through 1999.

**Response to Request No. 13:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is a decade or more older in years and is not available in Registrant's records and cannot be obtained from

Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

14. You have not used Your Mark on "relish" during the year 2000.

**Response to Request No. 14:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

15. You have not used Your Mark on "tartar sauce" during the year 2000.

**Response to Request No. 15:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as

requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

16. You have not used Your Mark on "vinegar" during the year 2000.

**Response to Request No. 16:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

17. You have not used Your Mark on "spices" during the year 2000.

**Response to Request No. 17:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

18. You have not used Your Mark on "capers" during the year 2000.

**Response to Request No. 18:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

19. You have not used Your Mark on "condiments" during the year 2000.

**Response to Request No. 19:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

20. You have not used Your Mark on "marinated mushrooms" during the year 2000.

**Response to Request No. 20:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

21. You have not used Your Mark on "mustard" during the year 2000.

**Response to Request No. 21**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

22. You have not used Your Mark on "rice" during the year 2000.

**Response to Request No. 22**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

23. You have not used Your Mark on "food flavoring" during the year 2000.

**Response to Request No. 23**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market.

Without waiver of the foregoing objections, Registrant denies this Request.

24. You have not used Your Mark on "salad dressing" during the year 2000.

**Response to Request No. 24**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

25. You have not used Your Mark on "salad oil" during the year 2000.

**Response to Request No. 25**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

26. You have not used Your Mark on "mayonnaise" during the year 2000.

**Response to Request No. 26**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately eight years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

27. You have not used Your Mark on "relish" during the year 2001.

**Response to Request No. 27**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly



burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

28. You have not used Your Mark on "tartar sauce" during the year 2001.

**Response to Request No. 28**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

29. You have not used Your Mark on "vinegar" during the year 2001.

**Response to Request No. 29**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly

burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

30. You have not used Your Mark on "spices" during the year 2001.

**Response to Request No. 30**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

31. You have not used Your Mark on "capers" during the year 2001.

**Response to Request No. 31**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly

burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

32. You have not used Your Mark on "condiments" during the year 2001.

**Response to Request No. 32**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

33. You have not used Your Mark on "marinated mushrooms" during the year 2001.

**Response to Request No. 33**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly

burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

34. You have not used Your Mark on "mustard" during the year 2001.

**Response to Request No. 34**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

35. You have not used Your Mark on "rice" during the year 2001.

**Response to Request No. 35**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly

burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

36. You have not used Your Mark on "food flavoring" during the year 2001.

**Response to Request No. 36**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

37. You have not used Your Mark on "salad dressing" during the year 2001.

**Response to Request No. 37**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly

burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

38. You have not used Your Mark on "salad oil" during the year 2001.

**Response to Request No. 38**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

39. You have not used Your Mark on "mayonnaise" during the year 2001.

**Response to Request No. 39**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately seven years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly

burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

40. You have not used Your Mark on "relish" during the year 2002.

**Response to Request No. 40**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

41. You have not used Your Mark on "tartar sauce" during the year 2002.

**Response to Request No. 41**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

42. You have not used Your Mark on "vinegar" during the year 2002.

**Response to Request No. 42**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

43. You have not used Your Mark on "spices" during the year 2002.

**Response to Request No. 43**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome



on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

44. You have not used Your Mark on "capers" during the year 2002.

**Response to Request No. 44**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

45. You have not used Your Mark on "condiments" during the year 2002.

**Response to Request No. 45**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

46. You have not used Your Mark on "marinated mushrooms" during the year 2002.

**Response to Request No. 46**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

47. You have not used Your Mark on "mustard" during the year 2002.

**Response to Request No. 47**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

48. You have not used Your Mark on "rice" during the year 2002.

**Response to Request No. 48**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

49. You have not used Your Mark on "food flavoring" during the year 2002.

**Response to Request No. 49**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

50. You have not used Your Mark on "salad dressing" during the year 2002.

**Response to Request No. 50**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

51. You have not used Your Mark on "salad oil" during the year 2002.

**Response to Request No. 51**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

52. You have not used Your Mark on "mayonnaise" during the year 2002.

**Response to Request No. 52**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately six years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

53. You have not used Your Mark on "relish" during the year 2003.

**Response to Request No. 53**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

54. You have not used Your Mark on "tartar sauce" during the year 2003.

**Response to Request No. 54**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

55. You have not used Your Mark on "vinegar" during the year 2003.

**Response to Request No. 55**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

56. You have not used Your Mark on "spices" during the year 2003.

**Response to Request No. 56**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

57. You have not used Your Mark on "capers" during the year 2003.

**Response to Request No. 57**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

58. You have not used Your Mark on "condiments" during the year 2003.

**Response to Request No. 58**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

59. You have not used Your Mark on "marinated mushrooms" during the year 2003.

**Response to Request No. 59**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome



on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

60. You have not used Your Mark on "mustard" during the year 2003.

**Response to Request No. 60**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

61. You have not used Your Mark on "rice" during the year 2003.

**Response to Request No. 61**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

62. You have not used Your Mark on "food flavoring" during the year 2003.

**Response to Request No. 62**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

63. You have not used Your Mark on "salad dressing" during the year 2003.

**Response to Request No. 63**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

64. You have not used Your Mark on "salad oil" during the year 2003.

**Response to Request No. 64**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

65. You have not used Your Mark on "mayonnaise" during the year 2003.

**Response to Request No. 65**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately five years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

66. You have not used Your Mark on "relish" during the year 2004.

**Response to Request No. 66**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

67. You have not used Your Mark on "tartar sauce" during the year 2004.

**Response to Request No. 67**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

68. You have not used Your Mark on "vinegar" during the year 2004.

**Response to Request No. 68**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

69. You have not used Your Mark on "spices" during the year 2004.

**Response to Request No. 69**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

70. You have not used Your Mark on "capers" during the year 2004.

**Response to Request No. 70**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

71. You have not used Your Mark on "condiments" during the year 2004.

**Response to Request No. 71**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

72. You have not used Your Mark on "marinated mushrooms" during the year 2004.

**Response to Request No. 72**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

73. You have not used Your Mark on "mustard" during the year 2004.

**Response to Request No. 73**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

74. You have not used Your Mark on "rice" during the year 2004.

**Response to Request No. 74**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

75. You have not used Your Mark on "food flavoring" during the year 2004.

**Response to Request No. 75**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome



on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

76. You have not used Your Mark on "salad dressing" during the year 2004.

**Response to Request No. 76**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

77. You have not used Your Mark on "salad oil" during the year 2004.

**Response to Request No. 77**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

78. You have not used Your Mark on "mayonnaise" during the year 2004.

**Response to Request No. 78**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately four years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

79. You have not used Your Mark on "relish" during the year 2005.

**Response to Request No. 79**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

80. You have not used Your Mark on "tartar sauce" during the year 2005.

**Response to Request No. 80**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

81. You have not used Your Mark on "vinegar" during the year 2005.

**Response to Request No. 81**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

82. You have not used Your Mark on "spices" during the year 2005.

**Response to Request No. 82**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

83. You have not used Your Mark on "capers" during the year 2005.

**Response to Request No. 83**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

84. You have not used Your Mark on "condiments" during the year 2005.

**Response to Request No. 84**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

85. You have not used Your Mark on "marinated mushrooms" during the year 2005.

**Response to Request No. 85**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

86. You have not used Your Mark on "mustard" during the year 2005.

**Response to Request No. 86**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

87. You have not used Your Mark on "rice" during the year 2005.

**Response to Request No. 87**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

88. You have not used Your Mark on "food flavoring" during the year 2005.

**Response to Request No. 88**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

89. You have not used Your Mark on "salad dressing" during the year 2005.

**Response to Request No. 89**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome

on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

90. You have not used Your Mark on "salad oil" during the year 2005.

**Response to Request No. 90**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

91. You have not used Your Mark on "mayonnaise" during the year 2005.

**Response to Request No. 91**

Subject to and notwithstanding the General Objections, Registrant objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is approximately three years old, and is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome



on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

92. You have not used Your Mark on "relish" during the year 2006.

**Response to Request No. 92**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

93. You have not used Your Mark on "tartar sauce" during the year 2006.

**Response to Request No. 93**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

94. You have not used Your Mark on "vinegar" during the year 2006.

**Response to Request No. 94**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

95. You have not used Your Mark on "spices" during the year 2006.

**Response to Request No. 95**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

96. You have not used Your Mark on "capers" during the year 2006.

**Response to Request No. 96**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

97. You have not used Your Mark on "condiments" during the year 2006.

**Response to Request No. 97**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

98. You have not used Your Mark on "marinated mushrooms" during the year 2006.

**Response to Request No. 98**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

99. You have not used Your Mark on "mustard" during the year 2006.

**Response to Request No. 99**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

100. You have not used Your Mark on "rice" during the year 2006.

**Response to Request No. 100**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

101. You have not used Your Mark on "food flavoring" during the year 2006.

**Response to Request No. 101**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

102. You have not used Your Mark on "salad dressing" during the year 2006.

**Response to Request No. 102**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

103. You have not used Your Mark on "salad oil" during the year 2006.

**Response to Request No. 103**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

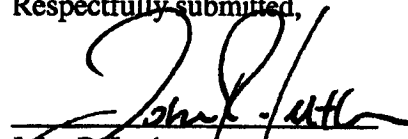
104. You have not used Your Mark on "mayonnaise" during the year 2006.

**Response to Request No. 104**

Registrant objects to this Request as requesting non-relevant information and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant denies this Request.

Respectfully submitted,

By:

  
John P. Luther  
One of Registrant's Attorneys

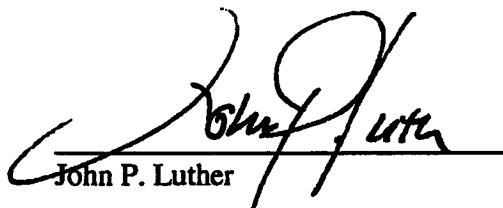
Frederick W. Meyers  
Burton S. Ehrlich  
John P. Luther  
Tanya H. Miari  
Ladas & Parry LLP  
224 South Michigan Avenue, Suite 1600  
Chicago, Illinois 60604  
(312) 427-1300

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing REGISTRANT'S RESPONSES TO PETITIONER'S REQUESTS FOR ADMISSION TO REGISTRANT was served upon Petitioner's counsel on this 4<sup>th</sup> day of November 2008 by email to lperry@perryip.com and deposited with the United States Postal Service on the 4<sup>th</sup> of November with sufficient postage as First Class Mail in an envelope addressed to

E. Lynn Perry  
Perry IP Group ALC  
4 Embarcadero Center, 39<sup>th</sup> Floor,  
San Francisco, CA 94111

November 4, 2008

  
John P. Luther

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

U.S. Trademark Registration No.1,758,520  
Registered Mark: SALAD BAR

Fresh Express Incorporated,

Petitioner,

vs.

Cancellation No. 92047162

Supreme Oil Company,

Registrant.

**REGISTRANT'S RESPONSES TO PETITIONER'S  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Registrant, Supreme Oil Company, herein answers and responds to the  
Petitioner's First Set of Document Requests, pursuant to Rule 34 of the Federal Rules of  
Civil Procedure.

**GENERAL OBJECTIONS**

1. Registrant hereby incorporates by reference its General Objections and those objections contained in its RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES.
2. Registrant objects to Petitioner's Requests to the extent that they purport to impose any duty on Registrant inconsistent with, or beyond that specified in the Federal Rules of Civil Procedure. This objection is pertinent to each of Petitioner's Requests and Registrant's Responses.
3. Registrant further objects to the entire set of Requests on the basis that at times the Petitioner has not limited its request for information to the U.S. market or a

specified time period or the goods covered by the application being opposed in these proceedings. Some of the requested information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and is further overly broad, burdensome and oppressive in that it requires an accumulation of information potentially on other subject matter and would cause Registrant to peruse virtually all corporate records over an extended time period.

4. Further, Registrant objects to providing any document which is immune from discovery and may be protected by the attorney-client, work product, or other privilege.

5. Registrant objects to any Requests requiring or purporting to require the search of the files of others. Registrant is not required to search and provide documents from independent, third parties under the Federal Rules.

6. Registrant objects to providing documents to the extent that they contain information regarded as confidential, proprietary or trade secrets. The Registrant would agree to a reasonable Protective Order to maintain the confidentiality of certain requested information.

7. Registrant further objects to the extent that the Requests may be construed to require the production of documents in any manner inconsistent with Production Procedures under the Federal Rules.

8. Registrant bases its responses upon the present knowledge (a) without conceding relevancy or materiality of any Requests, (b) without prejudice to Registrant's right to object to further discovery proof of the subject matter, and (c) incorporates its general objections into each Request. Registrant reserves the right to change or



supplement a response should it appear to be incomplete or incorrect, or if additional information or documents should become available.

**Request No. 1**

Representative documents concerning the creation, design, selection, approval, adoption, display and use of Your Mark.

**Response No 1:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without a waiver of any of its objections, the Registrant states that due to the passage of the many years involved the documents are not known to presently exist.

**Request No. 2**

All documents comprising or relating to any assignments, licenses, permissions, consents or other transfers of any right, title, or interest in Your Mark.

**Response No 2:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and that such request for "permissions" and/or "consents" could encompass every sales related document of the Registrant. Further, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records. Without waiver of any of its objections, no such documents are presently known to exist.

**Request No. 3**

Representative documents concerning use of Your Mark or any confusingly similar mark, by third parties.

**Response No. 3:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and that such request for "confusingly similar" is vague and indefinite. Further, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records. Without waiver of any of its objections, no such documents are presently known to exist.

**Request No. 4**

All documents concerning any application for trademark registration made by Registrant or any other person or entity for Your Mark in the United States Patent and Trademark Office.

**Response No. 4:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel and overly vague and unduly burdensome as the request would require the Registrant to identify and produce all documents relating to any third party application in the United States Patent and Trademark Office without regard to time period or the goods or services associated with the third party application. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Also, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records. Furthermore, Registrant objects to the burdensome nature of this request as all U.S. application documents are available for public viewing on the USPTO database.

**Request No. 5**

All documents concerning or comprising evidence, if any, of Registrant's first use and first use in interstate commerce in the United States of the Mark SALAD BAR.

**Response No. 5:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as the requested information is for over a fifty year period and not reasonably calculated to lead to the

discovery of admissible evidence, since the selection, adoption and first use of the marks occurred many years prior to the Registrant's activities at issue. Further, such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Without a waiver of any of its objections, the Registrant states that due to the passage of the many years involved the documents are not known to presently exist.

**Request No. 6**

All documents concerning or comprising evidence of Registrant's use in commerce in the United States of the Mark SALAD BAR since March 16, 1993.

**Response No. 6:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel as such information is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further Registrant objects to this Request as being not reasonably calculated to lead to the discovery of admissible evidence and overly vague and unduly burdensome on the basis that it seeks information/records which are more than fifteen (15) years old and which are not available, reasonably available, or obtainable and/or no longer in existence and it would require Registrant to gather each and every document related to its mark that could possibly be described and construed as use in the United States. Without waiver of the

foregoing objections, Registrant, upon reasonable inspection, will provide the requested documents subject to their availability and/or existence.

**Request No. 7**

Representative documents concerning Registrant's actual and potential market, customers, and users of the Goods intended to be provided under the SALAD BAR Mark.

**Response No. 7:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market, requiring Registrant to seek out every possible user of Goods under its mark and hypothesize as to how the Goods could possibly be used by even potential customers. The request is global in scope in requiring that virtually each and every document be produced from Registrant's entire business operations and without regard to time period, or even limited to the products involved or relating to the underlying proceedings. Furthermore, the Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiving the foregoing objections, Registrant, upon

reasonable inspection, will make available representative documents sufficient to illustrate Registrant's customer base, subject to availability and/or existence.

**Request No. 8**

Representative documents concerning the channels of trade in which Registrant's Goods are intended to be, or are advertised, marketed, or sold.

**Response No. 8:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Registrant also objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiver of the foregoing objections, Registrant, upon reasonable inspection, will make available representative documents sufficient to illustrate channels of trade subject to availability and/or existence.

**Request No. 9**

Representative documents concerning Registrant's actual or planned advertising and promotion of Goods associated with the SALAD BAR mark.

**Response No. 9:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and no reference is made to the relevant time period. Without waiver of the foregoing objections, Registrant, upon reasonable inspection, will make available representative documents sufficient to satisfy this request subject to availability and/or existence.

**Request No. 10**

Examples of copies of each and every advertisement, display and item of promotional material and any and all drafts of the same, whether or not used, in connection with any Goods associated with the SALAD BAR mark.

**Response No. 10**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now



deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and Petitioner's request for "each and every" document pertaining to the underlying subject matter is overly broad and oppressive in the scope of the request. This Request is also objected to as seeking non-relevant information as to "drafts" and "non-used" items. Without a waiver of any of its objections, the Registrant, upon reasonable inspection, will make available representative documents sufficient to identify advertising subject to availability and/or existence.

**Request No. 11**

Documents sufficient to disclose all marketing, advertising and promotional expenditures to be made by Registrant in connection with its use of the SALAD BAR Mark.

**Response No. 11:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to hypothesize and produce documents

evidencing "all" promotional expenditures Registrant has yet to make in connection with its mark. Registrant also objects to this Request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings.

#### **Request No. 12**

Representative documents concerning communications between Registrant and any third party, including advertising agencies, publishers, sellers, vendors, relating to any advertising, promotion, or marketing in connection with any Goods associated with the SALAD BAR Mark.

#### **Response No. 12**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and as it would require Registrant to seek out every possible third party Registrant has spoken to with regard to its mark. Furthermore, the Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting

documents beyond the scope of the products at issue in these proceedings. The request is also objected to as non-relevant, oppressive and unduly burdensome as it is global in scope in requiring that virtually each and every document be produced from Registrant's entire business operations and without regard to time period, or even limited to the products involved or relating to the underlying proceedings.

**Request No. 13**

Representative documents concerning the marketing, promotion and sales procedures or methods used by Registrant in connection with any Goods associated with the SALAD BAR Mark.

**Response No. 13**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Registrant also objects to the Request as being redundant, as Registrant has previously answered in previous responses, that it will, upon reasonable inspection, provide representative samples of advertising and marketing

channels information, subject to availability and/or existence, and subject to the listed objections.

**Request No. 14**

Representative documents concerning the marketing, promotion and sales procedures or methods to be used by Registrant in connection with any Goods associated with the SALAD BAR Mark.

**Response No. 14:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as requesting non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market, and has requested documents which are not yet in existence.

**Request No. 15:**

Representative documents concerning sales solicitation by Registrant for any Goods associated with the SALAD BAR Mark.

**Response No. 15:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. This Request is also objected to as the term "sales solicitation" is undefined and consequently unintelligible, and it cannot be discerned with any accuracy exactly what is being requested. Registrant also objects to this Request in that it appears to ask for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as appearing to request non-relevant information not reasonably calculated to lead to the discovery of admissible evidence and as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has not defined the scope of "sales solicitation" and fails to define any relevant time period.

#### **Request No. 16**

All documents concerning actual of planned surveys, market research, consumer perception studies, secondary meaning pilots or surveys or other investigations or studies made by or on behalf of Registrant concerning any Goods associated with the SALAD BAR Mark.

#### **Response No. 16**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it appears to ask for

information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant produce "all" documents pertaining to the underlying subject matter. Registrant also objects to this Request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiving the foregoing objections, no documents are known to exist at this time.

**Request No. 17.**

All documents concerning any studies of demographics of purchasers or likely purchasers of Registrant's Goods associated with the SALAD BAR Mark.

**Response No. 17.**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant produce "all" documents pertaining to the

underlying subject matter. Registrant also objects to this Request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiving the foregoing objections, no documents are known to exist at this time.

**Request No. 18**

Representative reviews, reports and mentions in any publication or by any third party since March 16, 1993 of Registrant's SALAD BAR Mark.

**Response No. 18**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to seek out documented evidence of any and all references made by any party regarding Registrant's mark. Further, the Registrant objects to being required to produce documents which are not under its custody, possession or control and would be third party records.

**Request No. 19**

At least one (1) sample of each Document which describes, advertises, offers, or otherwise refers to any Goods associated with SALAD BAR Mark.

**Response No. 19:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Registrant also objects to this Request as being redundant, as Registrant has previously agreed to provide, upon reasonable inspection, representative samples of requested documents, subject to availability and/or existence, and/or has already provided some in its earlier Responses, subject to the relevant objections.

**Request No. 20**

All documents which project or discuss expected revenues for Goods sold under the SALAD BAR Mark.

**Response No. 20**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which



is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to produce documents containing future information with no relevant time period established. Moreover, Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings.

**Request No. 21**

All documents concerning Petitioner, excluding documents on file in this Cancellation Proceeding.

**Response No. 21:**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market and has required Registrant to seek out documented evidence of any and all references to the Petitioner. Further, the Registrant objects to being required to produce

documents which are not under its custody, possession or control and would be third party records. Finally, Registrant objects to the request as requiring the production of documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, by requesting documents beyond the scope of the products at issue in these proceedings. Without waiver of the foregoing objections, no such documents are known to exist at this time.

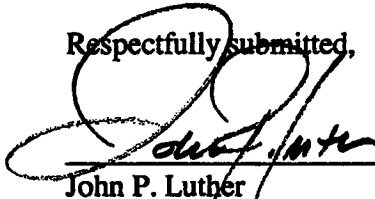
**Request No. 22**

To the extent not already called for, each and every Document identified in response to Petitioner's First Set of Interrogatories.

**Response No. 22**

Subject to and notwithstanding the General Objections, Registrant objects to this Request to the extent it requests attorney-client privileged information and/or attorney work product. Registrant also objects to this Request in that it asks for information which is non-relevant and/or not available to Registrant or its current counsel, is not available in Registrant's records and cannot be obtained from Registrant's former counsel who is now deceased. Further, Registrant objects to this Request as being irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, and overly vague and unduly burdensome on the basis that Petitioner has not limited its request for information to the U.S. market. Without waiving the foregoing objections, Registrant refers Petitioner to its Responses to Petitioner's First Set of Interrogatories.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John P. Luther", is written over a horizontal line.

John P. Luther  
One of The Attorneys  
For The Registrant

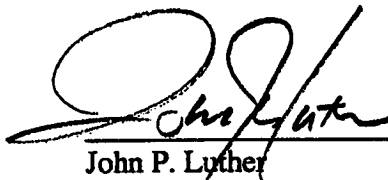
Frederick W. Meyers  
Burton S. Ehrlich  
John P. Luther  
Tanya H. Miari  
LADAS & PARRY LLP  
224 South Michigan Avenue  
Suite 1600  
Chicago, Illinois 60604  
(312) 427-1300

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing REGISTRANT'S RESPONSES TO PETITIONER'S REQUESTS FOR PRODUCTION TO REGISTRANT was served upon Petitioner's counsel on this 5<sup>th</sup> day of November 2008 by email to [lperry@perryip.com](mailto:lperry@perryip.com) and deposited with the United States Postal Service on the 5<sup>th</sup> of November with sufficient postage as First Class Mail in an envelope addressed to:

E. Lynn Perry  
Perry IP Group ALC  
4 Embarcadero Center, 39<sup>th</sup> Floor,  
San Francisco, CA 94111

November 5, 2008

  
\_\_\_\_\_  
John P. Luther

# **EXHIBIT D**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**PETITIONER'S SECOND SET OF  
REQUESTS FOR ADMISSION TO  
REGISTRANT Nos. 1-585**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and C.F.R. 2.120, FRESH EXPRESS INCORPORATED, ("Petitioner"), hereby propounds and serves the following second set of requests for admissions upon SUPREME OIL COMPANY ("Registrant"). These requests are continuing and impose upon Registrant the obligations stated in Fed. R. Civ. P. 26.

**DEFINITIONS AND INSTRUCTIONS**

The Definitions and Instructions contained herein are incorporated by reference and shall apply to these requests.

1. The term "YOU", "YOUR", SUPREME OIL, or REGISTRANT means Supreme Oil, Inc., any predecessors in interest to the mark that is the subject of this cancellation proceeding, or any other PERSON acting or purporting to act on their behalf.

2. The term "FRESH EXPRESS" means Petitioner Fresh Express, Inc. and its present and former officers, directors, employees, agents, representatives, subsidiaries, affiliates, divisions, departments, or any other PERSON acting or purporting to act on its behalf.

3. The term "REGISTRANT'S MARK" means the mark in Registration No. 1,758,520.

4. The term "DOCUMENTS" has the meaning set forth in Rule 34 of the Federal Rules of Civil Procedure, and includes without limitation, any written recorded, computerized, filed, printed or graphic matter, however produced or reproduced, and any drafts, revisions, or amendments thereof.

5. The terms "AND" as well as "OR" shall be construed either disjunctively or conjunctively so as to require the broadest response to any interrogatory.

6. The singular shall always include the plural and the present tense shall always include the past tense.

7. Each request shall be admitted or denied separately and fully in writing and under oath. The admissions and denials are to be signed and sworn to by the person making them. If YOU refuse to admit or deny any request, in whole or in part, YOU must state each specific ground for YOUR refusal. If YOU claim privilege as a ground for not admitting or denying any request in whole or in part, describe the factual basis for YOUR claim of privilege in sufficient detail so as to permit the Court to adjudicate the validity of the claim. If YOU object in part to any request, admit or deny the remainder completely.

8. To the extent any information called for by these requests is unknown to YOU, so state, and set forth such remaining information as is known. If any estimate can reasonably be

made in place of unknown information, also set forth YOUR best estimate, clearly designated as such, in place of unknown information, and describe the basis upon which the estimate is made.

9. Unless otherwise stated, the time period applicable to these requests is unlimited.
10. Unless otherwise specified, these requests pertain only to YOUR activities for the United States.
11. The Board's standard protective order is currently in place. See 37 CFR §2.120(d)(1).

### REQUESTS

FRESH EXPRESS requests REGISTRANT to admit or deny the following:

1. YOU have no records that show that YOU used REGISTRANT'S MARK on "relish" during the year 1993.
2. YOU have no records that show that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 1993.
3. YOU have no records that show that YOU used REGISTRANT'S MARK on "vinegar" during the year 1993.
4. YOU have no records that show that YOU used REGISTRANT'S MARK on "spices" during the year 1993.
5. YOU have no records that show that YOU used REGISTRANT'S MARK on "capers" during the year 1993.
6. YOU have no records that show that YOU used REGISTRANT'S MARK on "condiments" during the year 1993.
7. YOU have no records that show that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 1993.



8. YOU have no records that show that YOU used REGISTRANT'S MARK on "mustard" during the year 1993.

9. YOU have no records that show that YOU used REGISTRANT'S MARK on "rice" during the year 1993.

10. YOU have no records that show that YOU used REGISTRANT'S MARK on "food flavoring" during the year 1993.

11. YOU have no records that show that YOU used REGISTRANT'S MARK on "salad dressing" during the year 1993.

12. YOU have no records that show that YOU used REGISTRANT'S MARK on "salad oil" during the year 1993.

13. YOU have no records that show that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 1993.

14. YOU have no records that show that YOU used REGISTRANT'S MARK on "relish" during the year 1994.

15. YOU have no records that show that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 1994.

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119. YOU have no records that show that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2002.

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249. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 1997.

250. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "vinegar" during the year 1997.

251. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "spices" during the year 1997.

252. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "capers" during the year 1997.

253. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "condiments" during the year 1997.

254. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 1997.

255. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "mustard" during the year 1997.

256. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "rice" during the year 1997.

257. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "food flavoring" during the year 1997.

258. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "salad dressing" during the year 1997.

259. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "salad oil" during the year 1997.

260. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 1997.

261. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "relish" during the year 1998.
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264. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "spices" during the year 1998.
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270. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "food flavoring" during the year 1998.
271. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "salad dressing" during the year 1998.



272. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "salad oil" during the year 1998.

273. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 1998.

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312. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2001.
313. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "relish" during the year 2002.
314. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2002.
315. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "vinegar" during the year 2002.

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365. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "relish" during the year 2006.

366. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2006.

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377. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2006.

378. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "relish" during the year 2007.

379. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2007.

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389. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "salad oil" during the year 2007.

390. YOU have no evidence that shows that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2007.

391. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "relish" during the year 1993.

392. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 1993.

393. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "vinegar" during the year 1993.

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510. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "vinegar" during the year 2002.

511. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "spices" during the year 2002.

512. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "capers" during the year 2002.

513. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "condiments" during the year 2002.

514. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 2002.

515. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mustard" during the year 2002.

516. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "rice" during the year 2002.

517. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "food flavoring" during the year 2002.

518. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad dressing" during the year 2002.

519. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad oil" during the year 2002.

520. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2002.

521. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "relish" during the year 2003

522. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2003.

523. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "vinegar" during the year 2003.

524. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "spices" during the year 2003.

525. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "capers" during the year 2003.

526. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "condiments" during the year 2003.

527. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 2003.

528. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mustard" during the year 2003.

529. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "rice" during the year 2003.

530. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "food flavoring" during the year 2003.

531. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad dressing" during the year 2003.

532. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad oil" during the year 2003.

533. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2003.

534. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "relish" during the year 2004.

535. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2004.



536. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "vinegar" during the year 2004.

537. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "spices" during the year 2004.

538. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "capers" during the year 2004.

539. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "condiments" during the year 2004.

540. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 2004.

541. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mustard" during the year 2004.

542. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "rice" during the year 2004.

543. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "food flavoring" during the year 2004.

544. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad dressing" during the year 2004.

545. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad oil" during the year 2004.

546. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2004.

547. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "relish" during the year 2005.

548. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2005.

549. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "vinegar" during the year 2005.

550. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "spices" during the year 2005.

551. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "capers" during the year 2005.

552. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "condiments" during the year 2005.

553. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 2005.

554. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mustard" during the year 2005.

555. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "rice" during the year 2005.

556. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "food flavoring" during the year 2005.

557. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad dressing" during the year 2005.

558. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad oil" during the year 2005.

559. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2005.

560. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "relish" during the year 2006.

561. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2006.

562. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "vinegar" during the year 2006.

563. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "spices" during the year 2006.

564. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "capers" during the year 2006.

565. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "condiments" during the year 2006.

566. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 2006.

567. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mustard" during the year 2006.

568. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "rice" during the year 2006.

569. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "food flavoring" during the year 2006.

570. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad dressing" during the year 2006.

571. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad oil" during the year 2006.

572. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2006.

573. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "relish" during the year 2007.

574. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "tartar sauce" during the year 2007.

575. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "vinegar" during the year 2007.

576. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "spices" during the year 2007.

577. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "capers" during the year 2007.

578. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "condiments" during the year 2007.

579. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "marinated mushrooms" during the year 2007.

580. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mustard" during the year 2007.

581. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "rice" during the year 2007.

582. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "food flavoring" during the year 2007.

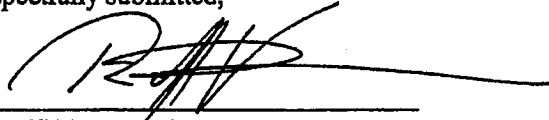
583. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad dressing" during the year 2007.

584. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "salad oil" during the year 2007.

585. YOU have no witness who can testify that YOU used REGISTRANT'S MARK on "mayonnaise" during the year 2007.

November 6, 2008

Respectfully submitted,



Raffi V. Zerounian

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# **EXHIBIT E**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**PETITIONER'S SECOND SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO REGISTRANT**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and C.F.R. 2.120 (d), FRESH EXPRESS INCORPORATED, ("Petitioner"), hereby requests that SUPREME OIL COMPANY ("Registrant"), produce for inspection and copying, at the offices of Perry IP Group ALC, 4 Embarcadero Center, 39<sup>th</sup> Floor, San Francisco, CA 94111, or at such other place as agreed to by the parties, within thirty (30) days from the date of service, the documents and things requested below. These requests are continuing and impose upon Registrant the obligations stated in Fed. R. Civ. P. 26.

**DEFINITIONS AND INSTRUCTIONS**

The following Definitions and Instructions contained herein are incorporated by reference and shall apply to these requests.

1. The term "PERSON" means any individual, corporation, partnership, association, or other commercial or legal entity.
2. The term "YOU" OR "YOUR" means Supreme Oil, Inc., any predecessors in interest to the mark that is the subject of this cancellation proceeding, or any other PERSON acting or purporting to act on their behalf.
3. The term "FRESH EXPRESS" means Petitioner Fresh Express, Inc. and its present and former officers, directors, employees, agents, representatives, subsidiaries, affiliates, divisions, departments, or any other PERSON acting or purporting to act on its behalf.
4. The term "REGISTRANT'S MARK" means the mark in Registration No. 1,758,520.
5. The term "DOCUMENTS" has the full extent of its meaning as provided in Rule 34 of the Federal Rules of Civil Procedure, and includes without limitation, any written recorded, computerized, filed, printed or graphic matter, however produced or reproduced, and any drafts, revisions, or amendments thereof. This includes all writings stored in electronic form, including those that may have been "deleted" from a hard drive.
6. The terms "AND" as well as "OR" shall be construed either disjunctively or conjunctively so as to require the broadest response to any paragraph of this Request.
7. The singular shall always include the plural and the present tense shall always include the past tense.
8. If YOU refuse to produce any DOCUMENT responsive in whole or in part to any Request, YOU must state each specific ground for YOUR refusal. If YOU claim privilege as a ground for not producing any DOCUMENT in whole or in part, describe the factual basis for



YOUR claim of privilege in sufficient detail so as to permit the Court to adjudicate the validity of the claim. At a minimum, this must include for each DOCUMENT so withheld: the author(s); the addressee(s) and person(s) copied; the general subject matter of the DOCUMENT; the date of the DOCUMENT; and the specific grounds for withholding the DOCUMENT. If YOU object to producing any part of any DOCUMENT, YOU must produce the portions of the DOCUMENT to which you do not object.

10. If any portion of a DOCUMENT is responsive to this Request, then the entire DOCUMENT shall be produced. DOCUMENTS produced pursuant to this Request shall be produced in the order in which they appear in YOUR files, and shall not be shuffled or otherwise rearranged. DOCUMENTS that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form.

11. Unless otherwise specified, these requests pertain only to YOUR activities for the United States.

12. The Board's standard protective order is currently in place. See 37 CFR §2.120(d)(1).

### REQUESTS

1. To the extent YOUR response to any of the requests for admission set forth in Petitioner's Requests for Admission To Registrant Nos. 1-104 (First Set) is anything other than an unqualified admission, please (i) produce all DOCUMENTS that support each and every basis for YOUR refusal to admit; (ii) produce DOCUMENTS sufficient to IDENTIFY all PERSONS with knowledge of any such facts; and (iii) produce DOCUMENTS sufficient to IDENTIFY all DOCUMENTS that support YOUR refusal to admit.

2. To the extent YOUR response to any of the requests for admission set forth in Petitioner's Second Set of Requests for Admission To Registrant is anything other than an unqualified admission, please (i) produce all DOCUMENTS that support each and every basis for YOUR refusal to admit; (ii) produce DOCUMENTS sufficient to IDENTIFY all PERSONS with knowledge of any such facts; and (iii) produce DOCUMENTS sufficient to IDENTIFY all DOCUMENTS that support YOUR refusal to admit.
3. DOCUMENTS sufficient to identify all goods or services YOU offer under REGISTRANT'S MARK.
4. DOCUMENTS sufficient to identify all goods or services YOU do not now offer, but plan to offer, under REGISTRANT'S MARK.
5. DOCUMENTS sufficient to identify all goods or services YOU previously offered, but do not currently offer, under REGISTRANT'S MARK.
6. DOCUMENTS revealing the geographic scope of YOUR past, present, and intended future use of goods under REGISTRANT'S MARK.
7. DOCUMENTS sufficient to show YOUR annual budgets and expenditures for marketing and advertising for goods under REGISTRANT'S MARK in the past, present, and, to the extent available, future
8. Representative samples of each of YOUR advertisements for goods or services bearing or advertised under REGISTRANT'S MARK, whether or not presently in use, including all print, billboard, radio, TV, Internet and other advertising, together with summaries of the amount YOU budgeted and spent for such advertising, for each year from 1993 to the present.

9. Copies of each of YOUR marketing materials for goods or services bearing or advertised under REGISTRANT'S MARK, whether or not presently in use, including all sales brochures, business cards, direct mail, electronic mail, and other materials, together with summaries of the amount YOU budgeted and spent for such marketing, for each year from 1993 to the present.
10. DOCUMENTS sufficient to show YOUR attendance at or participation in any trade show or other marketing event from 1993 to the present, including any DOCUMENTS YOU provided at said event, that REFER OR RELATE to products offered under REGISTRANT'S MARK.
11. All DOCUMENTS that REFER OR RELATE to any market studies, focus groups, or surveys that REFER OR RELATE to products offered under REGISTRANT'S MARK, from 1993 to the present.
12. Representative samples of DOCUMENTS, invoices, or customer testimonials that REFER OR RELATE to any purchaser of YOUR goods or services bearing or advertised under REGISTRANT'S MARK, from 1993 to the present.
13. DOCUMENTS from which YOUR profits and losses on each of YOUR goods or services bearing or advertised under REGISTRANT'S MARK, in dollars and units, can be determined, from 1993 to the present.
14. All DOCUMENTS that REFER OR RELATE to any challenge by YOU to any PERSON selling goods or services bearing or advertised under REGISTRANT'S MARK, including, but not limited to, any cease and desist letters YOU sent and any correspondence or communications which resulted from each such letter, pleadings filed in connection with any litigation or other proceedings which resulted from

**YOUR challenge, and any judgment or settlement agreement resolving YOUR challenge.**

15. **All DOCUMENTS that REFER OR RELATE to any third-party challenge to YOU regarding YOUR use of REGISTRANT'S MARK, including, but not limited to, any cease and desist letters YOU received and any correspondence or communications which resulted from each such letter, pleadings filed in connection with any litigation or other proceedings which resulted from the third-party challenge, and any judgment or settlement agreement resolving the third-party challenge.**
16. **All DOCUMENTS that REFER OR RELATE to any trademark searches, including but not limited to, the United States Trademark and Patent Office records, state trademark records, trademark or trade publications, business directories, or the records of any trademark service organization, conducted by YOU or on YOUR behalf, prior to YOUR selection of REGISTRANT'S MARK.**
17. **All DOCUMENTS that REFER OR RELATE to any investigations of any records, including but not limited to, the United States Trademark and Patent Office records, state trademark records, trademark or trade publications, business directories, or the records of any trademark service organization, conducted by YOU or on YOUR behalf, prior to YOUR selection of REGISTRANT'S MARK.**
18. **All DOCUMENTS that REFER OR RELATE to any trademark and/or service mark registrations worldwide for SALAD BAR owned by YOU or applications to register REGISTRANT'S MARK filed by or for YOU.**
19. **All DOCUMENTS that REFER OR RELATE to YOUR first use in commerce of REGISTRANT'S MARK on each of the goods listed in the identification of goods**

and services for REGISTRANT'S MARK, including but not limited to DOCUMENTS evidencing the date of first use in U.S. commerce.

20. All DOCUMENTS that REFER OR RELATE to YOUR licensing of REGISTRANT'S MARK, including but not limited to all license agreements with any third party.
21. All DOCUMENTS reflecting the content of each website, webpage, or other material displaying YOUR use of REGISTRANT'S MARK on the Internet.
22. DOCUMENTS from which YOUR channels of trade, *i.e.*, the venues in which and means and methodologies by which YOU offer and sell YOUR goods, or which YOU intend to offer and sell YOUR goods, may be determined, for each year from 1993 to the present, for goods bearing or advertised under REGISTRANT'S MARK.
23. All DOCUMENTS that constitute, REFER OR RELATE to correspondence, email and other communications between YOU and any advertising or public relations agency or firm employed by or for YOU to assist in the advertising, marketing and offering of services or products bearing or advertised under REGISTRANT'S MARK, from 1993 to the present.
24. All DOCUMENTS that YOU contend support any affirmative defense asserted by YOU in this proceeding.
25. DOCUMENTS sufficient to show the organizational and reporting structure of YOU, including the names and contact information of the persons chiefly responsible for advertising, product development, and production and distribution of goods offered under REGISTRANT'S MARK, for every year from 1993 to the present.

26. DOCUMENTS sufficient to identify all gross revenue and gross profits regarding sales of any goods offered under REGISTRANT'S MARK, from 1993 to the present.
27. All DOCUMENTS that constitute or are necessary to describe YOUR DOCUMENT retention policy or policies, from 1993 to the present.
28. All DOCUMENTS that REFER OR RELATE TO the reasons why YOU do not have copies of documents showing use of REGISTRANT'S MARK, as stated in YOUR responses to Petitioner's Requests for Admission To Registrant Nos. 1-104 (First Set).
29. All DOCUMENTS that constitute or RELATE TO YOUR plans to use REGISTRANT'S MARK.
30. All DOCUMENTS that constitute or RELATE TO permission YOU have given to third parties to use a trademark or trademarks comprising or incorporating the term "SALAD BAR."
31. All DOCUMENTS that constitute or RELATE TO negotiations or COMMUNICATIONS between YOU and any other PERSON RELATING TO the use by any PERSON other than YOU of a trademark or trademarks comprising or incorporating the term "SALAD BAR."
32. All DOCUMENTS that constitute or RELATE TO all analyses, studies or research RELATING TO the anticipated, intended, potential or actual market for products offered in connection with REGISTRANT'S MARK.
33. Any and all DOCUMENTS that RELATE TO the meaning, significance, and/or selection of REGISTRANT'S MARK, from 1993 to the present.
34. All DOCUMENTS comprising or RELATING TO any COMMUNICATIONS, in any form whatsoever, including any federal or state litigation, PTO or TTAB

COMMUNICATIONS, directed to YOU that have challenged or questioned YOUR right to use or register, or the scope of YOUR right to enforce, REGISTRANT'S MARK.

35. DOCUMENTS sufficient to identify any periods of nonuse of REGISTRANT'S MARK on any of the goods listed in the identification of goods and services in REGISTRANT'S MARK.
36. All DOCUMENTS showing that the consuming public associates each of the goods listed in the identification of goods and services in REGISTRANT'S MARK with YOU.
37. DOCUMENTS that constitute or REFER OR RELATE to business plans regarding use of REGISTRANT'S MARK, from 1993 to the present.
38. All DOCUMENTS that constitute or REFER OR RELATE to YOUR intention to stop use of REGISTRANT'S MARK, whether in the past, present, or future, for any of the goods listed in the identification of goods and services in REGISTRANT'S MARK.
39. DOCUMENTS sufficient to identify the amounts spent on marketing and advertising for goods bearing REGISTRANT'S MARK, for every year from 1993 to the present, broken down by year.
40. DOCUMENTS sufficient to identify companies and individuals in the chain of distribution of goods bearing REGISTRANT'S MARK, for every year from 1993 to the present.
41. DOCUMENTS sufficient to identify the number of products sold bearing REGISTRANT'S MARK every year, for every year from 1993 to the present.

42. DOCUMENTS sufficient to show the yearly sales figures for each product listed in the identification of goods and services in REGISTRANT'S Registration No. 1,758,520, which product was offered for sale under REGISTRANT'S MARK, for each year from 1993 to the present.
43. DOCUMENTS sufficient to identify to which party products bearing REGISTRANT'S MARK were shipped each year, from 1993 to the present.
44. DOCUMENTS sufficient to identify to the destination to which products bearing REGISTRANT'S MARK were shipped each year, from 1993 to the present.
45. DOCUMENTS sufficient to identify the identity of customers to which products bearing REGISTRANT'S MARK were shipped each year, from 1993 to the present.
46. Representative samples of invoices reflecting sales of products bearing REGISTRANT'S MARK each year, from 1993 to the present.
47. Representative samples of DOCUMENTS, including but not limited to bills of lading or shipping invoices, that show that products bearing REGISTRANT'S MARK were shipped each year, from 1993 to the present.
48. DOCUMENTS sufficient to establish the identity of distributors of products bearing REGISTRANT'S MARK, for each year from 1993 to the present.
49. DOCUMENTS sufficient to identify two (2) individuals who worked for YOU in the manufacturing or production process for products bearing REGISTRANT'S MARK, for every year from 1993 to the present, including name and phone number, facsimile number, email address, or address.
50. DOCUMENTS sufficient to identify two (2) customers that purchased products bearing REGISTRANT'S MARK from YOU, for every year from 1993 to the



present, including name and phone number, facsimile number, email address, or address.

51. DOCUMENTS sufficient to identify two (2) actual or potential wholesalers or distributors of products bearing or advertised under REGISTRANT'S MARK, for every year from 1993 to the present.
52. DOCUMENTS sufficient to identify each party that has manufactured or will manufacture products bearing or advertised under REGISTRANT'S MARK, for every year from 1993 to the present.
53. Representative samples of DOCUMENTS reflecting or constituting communications between YOU and any actual or potential supplier or manufacturer of goods bearing or advertised under REGISTRANT'S MARK, for every year from 1993 to the present.
54. Representative samples of DOCUMENTS reflecting or constituting communications between YOU and any actual or potential wholesaler or distributor of goods bearing or advertised under REGISTRANT'S MARK, for every year from 1993 to the present.
55. Representative samples of DOCUMENTS reflecting or constituting communications between YOU and any party to whom YOU have sold, offered to sell, or to whom YOU plan to sell or offer to sell goods bearing or advertised under REGISTRANT'S MARK, for every year from 1993 to the present.
56. Representative samples of DOCUMENTS reflecting or constituting communications between YOU and any party that has manufactured or that will manufacture goods

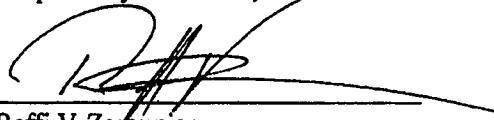
bearing or advertised under REGISTRANT'S MARK, for every year from 1993 to the present.

57. Representative samples of DOCUMENTS reflecting or constituting communications between YOU and any party that has sold, offered to sell, or that will sell or offer to sell goods bearing or advertised under REGISTRANT'S MARK.
58. DOCUMENTS sufficient to identify where products bearing or advertised under REGISTRANT'S MARK are currently sold, and where they have been sold each year from 1993 to the present.
59. Representative samples of DOCUMENTS relating to where or how products bearing or advertised under REGISTRANT'S MARK are advertised, promoted, or marketed, during each year from 1993 to the present.
60. DOCUMENTS sufficient to identify the number of products sold each month that bear or are advertised under REGISTRANT'S MARK, from the first date of use of REGISTRANT'S MARK to the present.
61. At least two (2) invoices showing sales of products bearing or advertised under REGISTRANT'S MARK for each month that YOU sold goods under REGISTRANT'S MARK, from the first date of use of REGISTRANT'S MARK to the present.
62. DOCUMENTS sufficient to identify any party responsible for the creation of labels for each product offered under REGISTRANT'S MARK, including the identity of any graphic artists, from 1993 to the present.
63. DOCUMENTS sufficient to identify any third parties who have knowledge of the use of REGISTRANT'S MARK from 1993 to the present.

64. DOCUMENTS sufficient to identify any individuals who have knowledge of the use of REGISTRANT'S MARK from 1993 to the present.
65. DOCUMENTS, not otherwise requested above, which YOU contend establish or support the use of REGISTRANT'S MARK or lack of intent to abandon REGISTRANT'S MARK from 1993 to the present on all goods listed in the identification of goods and services in REGISTRANT'S MARK.
66. Photographs of products bearing REGISTRANT'S MARK on each of the goods listed in the identification of goods and services in REGISTRANT'S MARK.
67. To the extent not already called for, each and every DOCUMENT identified in response to Petitioner's First Set of Interrogatories.
68. All DOCUMENTS, not otherwise requested above, which YOU intend to rely on or present at trial in this matter.

November 6, 2008

Respectfully submitted,



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